


ADDENDUM No. 2

TO: ALL BIDDERS
FROM: CITY OF HIALEAH
RFP #: 2014-15-2000-00-001
RE: P-25 PUBLIC SAFETY RADIO SYSTEM
DATE: OCTOBER 14, 2014

The original contract documents for the entitled: **RFP – P-25 Public Safety Radio System** need to be amended as noted in this Addendum No. 2.

This Addendum No. 2 consists of 1 typed page and 1 attachment. All other items and conditions of the original Contract Documents shall remain unchanged. This Addendum shall become a part of the Contract Documents.

Approved for issue:  Date: October 14, 2014
Angel Ayala - Purchasing Director

ACKNOWLEDGMENT

Receipt of this Addendum No. 2 shall be acknowledged in the space provided on the ADDENDUM RECEIPT form – ARF (Copy attached) now a part of the Contract Documents to be faxed immediately to the City of Hialeah Purchasing Division (305) 883-5871 and submitted with sealed bids.

The successful Proposer will be required to enter into a contract for the services to be rendered with City in substantial form with the agreement attached hereto.

CITY OF HIALEAH
P-25 PUBLIC SAFETY RADIO SYSTEM

2014/15-2000-00-001

ADDENDUM No. 2

COMPANY NAME _____

ADDRESS _____

PHONE NO. _____

CONTACT NAME _____ SIGNATURE _____

THE BIDDER ACKNOWLEDGES RECEIPT OF THE FOLLOWING ADDENDUM BY SIGNING AND DATING BELOW: (Copy of this form must be faxed immediately to the City of Hialeah at (305) 883-5871).

ADDENDUM

SIGNATURE

DATE

2

ARF

DRAFT 9 29 14

**AGREEMENT REGARDING
THE P25 800MHz TRUNKED DIGITAL
SIMULCAST PUBLIC SAFETY RADIO SYSTEM**

THIS AGREEMENT REGARDING THE P25 800MHz TRUNKED DIGITAL SIMULCAST PUBLIC SAFETY RADIO SYSTEM (the "P25 Radio System") is entered into as of the ____ day of _____, 2014 (the "Effective Date"), by and between [Entity], a _____ ("VENDOR") with its principal office located _____, and the CITY OF HIALEAH, a Florida municipal corporation ("City") (the "Agreement").

BACKGROUND FACTS

Whereas, the City has issued a Request For Proposals ("RFP") to obtain a P25 800MHz Trunked digital simulcast public safety radio system; and

Whereas, the City seeks to establish a network capable of meeting its current and future communication needs, operationally, functionally and reliably; and

Whereas, VENDOR submitted a proposal in response to the City's Request for Proposal (RFP 2014-15-XXX-XX-XXX); and

Whereas, the City has selected VENDOR after engaging in the RFP process and the VENDOR is able to perform the obligations set forth in the RFP in a capable, cost-effective manner.

Whereas, the City has relied upon the information provided by the VENDOR concerning the VENDOR's experience and ability to provide the services requested by the City; and

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VENDOR and City agree as follows:

1. BACKGROUND FACTS AND CAPITALIZED TERMS.

The Background Facts set forth above are true and correct and incorporated herein by this reference. All capitalized terms shall have the meanings given to them in this Agreement.

2. DEFINITIONS.

(a) *Active Unit* means a Unit which is: (i) capable of accessing the P25 Radio System (exclusive of whether the Unit is used on the P25 Radio System), and (ii) shown as active on the P25 Radio System at any time during the calendar month after final acceptance.

(b) *Agreement* means this Agreement, the Request for Proposals and any addenda thereto (collectively Exhibit 1), the Proposal by VENDOR, and any required documentation requested (Exhibit 2).

(c) *Force Majeure* means strikes, boycotts, , shipwrecks or obstructions to navigation, acts of God, acts of public enemy, acts of superior governmental authority, floods, windstorms, riots, rebellion, or any other similar circumstances for which a party is not reasonably responsible and which is not within its control.

(d) *Inactive Unit* means a Unit that has been deactivated by VENDOR in writing to City.

(e) *Work Sites* means those Work Sites (as hereafter defined) located on City property. The City-Owned Work Sites are listed in the RFP attached hereto. *Party* means either VENDOR or the City as the context requires. The term "Parties" shall mean both VENDOR and the City.

(f) *P25 (Project 25)* means a suite of standards, created by the Association of Public-Safety Communications Officials (APCO) for digital radio communications for use by federal, state and local public safety agencies to enable them to communicate with other agencies and provide mutual aid response teams in emergencies.

(g) *P25 Radio System Payment Schedule* means the payment schedule set forth in 1.21 of the RFP

(h) *Unit* means a mobile, portable or console radio unit.

3. **TERM.**

This Agreement shall commence as of the Effective Date and shall expire on [•] unless terminated before such date in accordance with the terms provided herein. This Agreement may be renewed upon the mutual agreement of the Parties.

4. **SCOPE OF SERVICES AND INCORPORATION.** The services to be performed by VENDOR are contained in the RFP, any associated addenda, and VENDOR's Response to Proposal. The RFP (Exhibit A) and the VENDOR'S Response (Exhibit B) are incorporated herein as part of this Agreement as if recited herein.

4. **PRIORITY OF DOCUMENTS.** The RFP and any associated addenda will take precedence over the Proposal submitted by VENDOR in the event of any conflict. The terms of this Agreement will take precedence over the RFP in the event of a conflict.

5. **P25 RADIO SYSTEM PAYMENT SCHEDULE** is as set forth in 1.21 of the RFP.

6. **ANNUAL SYSTEM SERVICE CHARGES.** The charges payable by the City are as set forth in the Proposal and VENDOR agrees that the annual service charges and the warranty submitted address all normal wear and tear use over the ____ years of the warranty and the _____ years agreed to for annual service charges, and that there will be no other

charges unless first requested by the customer in writing with an express reference to this paragraph. Annual system service charges will be paid in quarterly payments for services rendered, with each being due within 45 days of final, complete invoice tendered by VENDOR at the cessation of each quarter.

(a) City Services. The City shall: (i) provide VENDOR with daily, continuous access to the P25 Radio System for all Units; and (ii) provide reasonable service, support and installation for the Units in accordance with the service standards attached hereto as Exhibit 3.

(b) Monthly Fees. The fixed monthly fee for services described in subsection (a) above shall be adjusted each fiscal year based on the cost allocation described in Exhibit 3.

7. SYSTEM RESPONSIBILITIES.

The responsibilities and as it relates to the P25 Radio System shall be as follows:

(a) VENDOR Responsibilities. VENDOR shall be responsible for:

(i) The tower structure costs related to the provision of the services, goods, and facilities under this Agreement;

(ii) Communication infrastructure (fiber and networks) as it relates to the VENDOR-Owned Work Sites.

(iii) Microwave infrastructure maintenance (24x7x365);

(iv) Radio and infrastructure maintenance (24x7x365);

(v) All Work described in the Request for Proposals;

(vi) VENDOR warrants that all work, materials, services and equipment that may be reasonably inferred from this Agreement as being required to produce the intended result, will be supplied by the Contractor at its own cost, whether or not specifically identified and required in this Agreement.

(vii) VENDOR warrants and agrees that all work, materials, services and equipment necessitated by the inspections of the City or other regulatory agencies, in order to bring the VENDOR's work into compliance with this Agreement and all applicable laws, shall be the responsibility of the VENDOR and shall be provided at no additional cost to the City.

(b) City Responsibilities. City shall be responsible for:

(i) System FCC Licenses;

(ii) Reimbursement to VENDOR for all costs related to Work Sites, including costs for HVAC, electricity, lights, grounds keeping, shelter pest control, backup power system (i.e. generators) under the Agreement.

(c) VENDOR Billing for Cost Reimbursement for Post-First Year Warranty Costs. VENDOR shall send City an invoice for all such costs together with reasonable and legible documentation to support such costs (e.g., receipts, cancelled checks, invoices, etc.) and any other documentation as may be reasonably requested by City, no later than the fifteenth (15) day of each month for the previous month. City shall have thirty (30) days from the receipt of the invoice to make a payment to VENDOR via check or wired funds. A billing summary listing the itemized costs for Fiscal Year 2015-2016 is shown on Exhibit 4 attached hereto.

(d) System Ownership: The infrastructure for the P25 Radio System shall be owned by City, included but not limited to the network and other facilities supporting the P25 Radio System, all radios used on the P25 Radio System, and the Work where radio equipment is installed.

8. WORK SITES.

(e) Access to Work Site. Subject to the receipt of a written authorization from the Radio Manager for such access, City will provide access to VENDOR, its agents, authorized representatives, and contractors, during this Agreement Term to install, maintain and repair the P25 Radio System equipment and infrastructure on the Work Sites. VENDOR and its authorized agents and contractors shall (i) coordinate all work at the Work Sites in advance, and (ii) comply with all safety and security requirements when accessing those sites.

(f) Work Site Conditions and Hazardous Conditions. If VENDOR discovers a hazardous condition on the Work Site(s) that will materially impair VENDOR's ability to carry out its obligations under this Agreement or City's grant of access in Section 8(a) above as it pertains to the installation, repair or maintenance of the P25 Radio System on the Work Site VENDOR shall notify City in writing within twenty-four (24) hours upon having discovered such hazardous condition. Additionally, if a Party determines that Work Site can no longer serve this function, VENDOR will promptly investigate the conditions and will cooperate in the City's selection of any necessary replacement sites at no greater cost to City.

(g) Destruction of Work Sites. In the event that the Work Sites, or a major part thereof, are destroyed by fire, lightning, storm or other casualty such that the VENDOR is unable to use the Work Sites as provided herein, City shall repair such damage to its Work Sites at its own cost and expense to the extent commercially reasonable. In the event that the Work Sites are only partially destroyed by fire, lightning, storm or other casualty and the VENDOR is able to continue occupying a portion of the sites for VENDOR's purposes hereunder, VENDOR shall be required to continue performing the contract

8. SYSTEM USER MEETINGS.

City shall meet with VENDOR regarding P25 Radio System changes or upgrades if any and shall provide VENDOR with notice of the same. City will not make any significant changes or upgrades to the P25 Radio System without obtaining input from VENDOR on any such changes or upgrades.

9. TERM; EVENTS OF DEFAULT; TERMINATION.

(a) Events of Default. The occurrence of any one or more of the following events prior to the expiration of the Term shall constitute an "Event of Default" hereunder: (i) Failure to pay any sum of money becoming due under this Agreement, which such default continues for fifteen (15) days after written notice thereof; or (ii) Failure to perform or observe any material term, covenant or condition of this Agreement, which such default continues for thirty (30) days after written notice thereof.

(b) Termination Upon Event of Default. Upon the occurrence of an Event of Default, the non-defaulting party, at its sole and absolute election, may terminate this Agreement and exercise all rights and remedies it may have at law or in equity.

(c) Right to Cure. With respect to any default under this Section, any Party shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the defaulting Party. In the event any Party shall cure a default, the Party in default shall reimburse the curing Party for all costs and expenses incurred in connection with such curative action within thirty (30) days of receipt of demand, *together* with reasonable documentation supporting the expenditures made.

10. LIMITATION OF LIABILITY AND WARRANTIES.

NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY:

(A) NO PROVISION IN THIS AGREEMENT SHALL BE CONSTRUED AS A WAIVER OF A PARTY'S SOVEREIGN IMMUNITY BEYOND THE LIMITED WAIVER IN SECTION 768.28, FLORIDA STATUTES;

(B) NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL LOSSES OR DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES AND LOSS OF BUSINESS) OF THE OTHER PARTY, WHETHER FORESEEABLE OR NOT, WHETHER OCCASIONED BY ANY FAILURE TO PERFORM OR THE BREACH OF ANY OBLIGATION UNDER THIS AGREEMENT FOR ANY CAUSE WHATSOEVER OR OTHERWISE.

(C) THE CITY HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED BY THE CITY TO THE VENDOR UNDER THIS AGREEMENT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11. INSURANCE.

VENDOR represents and warrants to procure and maintain for the duration of the Agreement the following insurance policies as mandated by and with the minimum limits set by the City with coverage for occurrences and claims that may arise from or in connection with performance of the obligations hereunder by VENDORS, its agents, employees, representatives, and subcontractors: (i) general commercial liability insurance including but not limited to insure the VENDOR for legal liability on account of personal injury (including death resulting

wherefrom) or loss of or damage to property however arising in the execution of this Agreement and specifically including explosion, collapse, and underground damage. The combined liability limits shall not be less than \$1,000,000. This insurance shall include coverage for (a) Premises - Operations; (b) Broad Form Contractual Liability; (c) Products and Completed Operations; (d) Use of Contractors and Subcontractors; (e) Personal Injury; (f) Broad Form Property Damage. "Claims made" forms shall not be acceptable. The "occurrence form" shall not have a "sunset clause"; (ii) products liability insurance in the amount of [•]; and (iii) worker's compensation liability with limit not less than \$1,000,000 or as required under the laws of the state of Florida.

13. INDEMNITY.

VENDOR agrees to protect, defend, reimburse, indemnify and hold harmless the CITY, its agents, officers, directors, employees, contractors, and officials, whether elected or appointed, harmless from and against all claims, liability, expenses, costs, losses, damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals), and causes of action of every kind or character (including statutory, equitable or at common law, negligent, reckless, willful or intentional acts or omissions of the Vendor, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), including attorney's fees and costs for City's reasonable selection of counsel, whether at trial or appellate levels or otherwise, arising from or in any way connected to VENDOR's performance of this Contract, Vendor's violation of applicable law, or the negligent acts or omissions of the Vendor in the performance of this contract; provided, however, that this indemnity shall not exceed the contract value to be paid hereunder, and provided further, that VENDOR agrees that .25% has been added to its proposal costs, such that the total compensation submitted is inclusive of this .25% as compensation for this indemnity. This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property. Further, the Vendor's indemnity includes all claims based on, arising out of, or related to the payment of fees, royalties, or costs for any invention or patent rights or for the infringement of any copyrights or patents claimed by any Person, the City's decision to award this Agreement to the Vendor, and the Vendor's refusal to produce documents under the Public Records laws.

14. GENERAL PROVISIONS.

(a) Notices. All notices, requests, demands or other communications required by this Agreement or otherwise pertaining to this Agreement shall be in writing and shall be deemed to have been duly given to any party when delivered: (a) personally, (b) by overnight courier service, (c) confirmed facsimile (confirmed with a copy sent by overnight delivery or by mail), or (d) seven (7) days after being mailed by first-class mail, postage prepaid and return receipt requested. In each case, notice shall be given to the applicable addresses set forth below (or to such other address as such party shall have designated by notice so given to each other party):

If to the CITY:

If to VENDOR:

Office of the Mayor
City of Hialeah
501 Palm Avenue, 4th Floor
Hialeah, FL 33010

With Copies to:

With Copies to:

Office of the City Attorney
City of Hialeah
501 Palm Avenue, 4th Floor
Hialeah, FL 33010

(b) Delays.

(i) Force Majeure. Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure.

(ii) Other Delays. Subject to Section 11 above, if VENDOR (including its contractors) unreasonably delays the performance of this Agreement, it will compensate the City for all reasonable and actual charges and/or increased costs incurred because of this delay.[Lorena – cannot get both actual damages and liquidated damages; one always gets an argument with liquidated anyway, and where you will have documented costs, I would put a delay damage of \$100 per day or actual damages, whichever is greater, or just leave it at actual damages. I will need to ensure that the law on liquidated damages has not changed and will be ready to discuss this by the time you have completed your review.]

(c) Assignability: Subcontracting: Independent Contractors.

(i) Assignability and Subcontracting. Neither Party may assign this Agreement without the prior written consent of the other Party. Consent of such assignment will not be unreasonably withheld by the Parties. The Parties may subcontract any of the work, but subcontracting will not relieve such Party of its duties under this Agreement.

(ii) Independent Contractors. Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Hence, the City shall have no obligation to pay or provide for the Vendor's employees and any person employed by the

Vendor in the performance of services and functions pursuant to this Agreement shall have no claim to any rights or benefits provided by the City to the City's employees. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

(d) City of Hialeah Audit Rights. At all reasonable times, City shall have the right, through its representatives, to audit all of the records of VENDOR relating to the P25 Radio System. The audit shall include, but not be limited to, both revenue and expenses relating to the original purchase, bond issuance, contractual agreements, operation, maintenance and lease agreements of the P25 Radio System. VENDOR shall preserve and make available at reasonable times for examination and audit by the City, all financial records, supporting documents and any other documents pertinent to this Agreement for the required retention period established by the Florida Public Records Law, if applicable, or a minimum period of five (5) years after the termination of this Agreement, whichever is longer. The retention of such records and documents shall be at the VENDOR'S expense. Reasonable notice of an audit shall be given to VENDOR, which, absent an emergency situation, shall provide a minimum of ten (10) business days to produce documentation. Any and all such audits shall be at the sole expense of the City and shall not unreasonably interfere with VENDOR's operation of the P25 Radio System. Additional provisions. Additional provisions to this Agreement are allowable if mutually agreed upon by VENDOR and City.

(e) Equal Opportunity Employment. VENDOR shall comply with all federal, state and local laws applicable to the Contractor's services, specifically including those covering Equal Opportunity Employment, minimum wage laws, the Americans with Disabilities Act, and the Florida Building Code. The Vendor is expected to fully comply with all provisions of all applicable laws and the City reserves the right, but not the obligation, to verify the Vendor's compliance with them. Failure to comply with any applicable laws will be grounds for termination of this Agreement for cause.

(f) Venue: Applicable Law. The parties acknowledge, consent and agree that all legal actions or proceedings arising out of or related to this Agreement shall be initiated in a state or federal court in Miami-Dade County, Florida having competent jurisdiction. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida.

(g) Severability. Except as expressly provided to the contrary herein, each section, part, term or provision of this Agreement shall be considered severable, and, if for any reason, any section, part, term or provision herein is determined to be invalid, contrary to or in conflict with any existing or future law, rule or regulation by a court or governmental agency having competent jurisdiction, such determination shall not impair the operation of or have any other effect on the remaining sections, parts, terms or provisions of this Agreement, which shall continue to be given full force and effect and bind the parties, and such invalid sections, parts, terms or provisions shall not be deemed to be a part of this Agreement.

(h) Waiver. No waiver of any term of or obligation pursuant to this Agreement may occur or be enforced unless it is signed by both parties. The failure or delay by either party in asserting any of its rights or remedies as to any default hereunder shall not constitute a waiver of such default or any other default or of related rights or remedies.

(i) Headings. The headings and titles to sections herein are for convenience of reference and shall not be deemed to limit or alter any provision hereof.

(j) Counterparts. This Agreement may be executed by facsimile and counterpart signatures, the facsimile and counterparts which when taken together shall be deemed to constitute one agreement.

(k) Public Records. VENDOR acknowledges that the City of Hialeah is a public entity subject to Public Records laws, and that documents transmitted to the City or sent from the City are public records. VENDOR is also on notice to inform and educate itself over the extent of its own obligations under the Public Records laws of the State of Florida arising out of this Agreement, and acknowledges further that it will comply with those laws and cooperate on the production of public records upon request.

(l) No Waiver of Sovereign Immunity. No provision in this agreement shall be construed as a waiver of the city's sovereign immunity beyond the limited waiver in section 768.28, Florida Statutes.

(m) Default. The occurrence of any one or more of the following events with respect to VENDOR shall constitute an event of default hereunder:

(i) If VENDOR fails to timely pay its subcontractors or otherwise fails to adhere to its schedule for a period of time in excess of 15 days;

(ii) The filing of a petition by or against VENDOR under any provision of the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or recodified from time to time, or under any similar law relating to bankruptcy, insolvency, or other relief for debtors; or appointment of a receiver, assignee, trustee, custodian, liquidator (or similar official) of or for all or any part of the assets or property of the VENDOR; or the insolvency of the VENDOR; or the making of a general assignment for the benefit of creditors by the VENDOR; or the admission in writing by the VENDOR of its inability to pay its debts as they become due.

(iii) Upon the declaration of a default, and the failure to cure such default within 15 calendar days, the City may terminate this contract and shall be entitled to all remedies at law and in equity.

(n) Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties relating to the subject matter hereof and supersedes all prior negotiations, representations, agreements and understandings, oral or written, between them with respect to such subject matter.. There are no representations, warranties or covenants by the parties hereto relating to such subject matter other than those expressly set forth in this Agreement and any writings expressly required hereby.

(o) IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by the respective officials thereunto duly authorized, this the day and year first above written.

City of Hialeah, Florida
501 Palm Avenue
Hialeah, Florida 33010-0040

Attest:

Authorized signature on behalf of
City of Hialeah

Marbelys Fatjo
Acting City Clerk

Mayor Carlos Hernandez Date

(SEAL)

Approved as to form and legal sufficiency:

Lorena E. Bravo
Acting City Attorney

VENDOR:

Witnesses:

Signature Date

BY: _____
Signature Date

Print Name

Print Name and Title

Signature Date

Attest:

Print Name

Secretary

(SEAL)

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

Before me, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____, as _____, of _____, an organization authorized to do business in the State of Florida, and acknowledged that he/she executed the foregoing Agreement as the proper official of _____ for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/she is personally known to me or has produced _____ as identification.

In witness of the foregoing, I have set my hand and official seal in the State and County aforesaid on this _____ day of _____, 2014.

Notary Public

My commission expires: